

50-70

FAX

Date 11/22/2000

**Number of pages including
cover sheet** 12

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REMARKS:

☒ Urgent

☐ For your review

☐ Reply ASAP

☐ Please Comment

URGENT!!! Please see attached copy of Fax sent to Jeff Keohane this afternoon.

FAX**Date** 11/22/2000**Number of pages including
cover sheet** 11**TO:** Mr. Jeff Keohane
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Fax 781 652-8099**CC:****REMARKS:** ☒ Urgent ☐ For your review ☐ Reply ASAP ☐ Please Comment

Jeff, Please note that 30 MRSA 6206-A was passed by the Maine legislature in 1982, two years after the passage of the federal Settlement Act. 6206-A purports to deny the Maliseet civil and criminal jurisdiction over their lands. However, this amendment to the State implementing Act was done without the executed agreement of the Tribe as required by 1725 (e)(2) and without the ratification of Congress. It therefore never went into effect and cannot be used as a basis to make the NPDES determination.

Significantly, this 1982 State Act without a doubt, proves the point the Tribe has been trying to make, that the both the 1980 state and federal Acts left the Maliseet's criminal and civil jurisdiction completely intact. The State obviously agreed or would not have bothered to come back in 1982 to remove that jurisdiction!! Furthermore, you should remember that the State Act is predicated on the fact that the Maliseet's would NOT get federal recognition, so the state did not engage in the same negotiation as it had with the Penobscot and Passamaquoddy regarding the curtailment of jurisdiction. A simple review of the Senate hearing will bear this out. Please look at page 168 of the Senate Select Comm. report July 1 and 2, 1980. Moreover, the testimony of the Maine Attorney General that same day was that, without the compromise reached between the State, Penobscot and Passamaquoddy, the state would have No civil or criminal jurisdiction over their lands See page 170 id. Thus, without an agreement with the Maliseet, the State, at best has only concurrent jurisdiction, but not sufficient jurisdiction to regulate the Tribe or its lands.

Moreover, the 1986 State legislation I also provided also is aimed at amending the State Implementing Act, however, it shows that the Maine legislature was keenly aware of that fact that they needed both the Maliseet's approval and ratification by Congress, to amend the 1980 Settlement Act. They just failed to meet these criteria in 1982 when they attempted to unilaterally deprive the Maliseet of their Sovereignty and jurisdiction.

Doug Luckerman

PS I also suggest that you take a look at the last provision of the original State Implementing Act. It states that the Act will not be effective if Congress modifies the Act. Congress modified the Act. For one, it changed the definition of the Tribes from "being in existence in 1789" to "aboriginal entity" it furthermore altered the status of the Maliseet by providing the Maliseet with federal recognition. As you may recall, state act was passed prior to the Federal act. When Congress passed the federal act and included sections that override the state act i.e. definitions, Congress effectively modified the state act (1735 says that if there is a disagreement between state and federal act, federal act rules) There are other changes as well. Something to ponder.

see Page 3-960 Attached

APR 13 '92

675

BY GOVERNOR

PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-TWO

S.P. 931 - L.D. 2076

AN ACT to Amend the Maine Implementing
Act with Respect to the Houlton Band
of Maliseet Indians.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30 MRSA §6203, sub-§2-A is enacted to read:

2-A. Houlton Band Trust Land. "Houlton Band Trust Land" means land or natural resources acquired by the secretary in trust for the Houlton Band of Maliseet Indians, in compliance with the terms of this Act and the Maine Indian Claims Settlement Act of 1980, United States Public Law 96-420, with moneys from the original \$900,000 congressional appropriation and interest thereon deposited in the Land Acquisition Fund established for the Houlton Band of Maliseet Indians pursuant to United States Public Law 96-420, Section 5, United States Code, Title 25, Section 1724, or with proceeds from a taking of Houlton Band Trust Land for public uses pursuant to the laws of this State or the United States.

Sec. 2. 30 MRSA §6205-A is enacted to read:

§6205-A. Acquisition of Houlton Band Trust Land

1. Approval. The State of Maine approves the acquisition, by the secretary, of Houlton Band Trust Land within the State of Maine provided as follows.

A. No land or natural resources acquired by the secretary may have the status of Houlton Band Trust Land, or be deemed to be land or natural resources held in trust by the United States, until the secretary files with

the Maine Secretary of State a certified copy of the deed, contract or other instrument of conveyance, setting forth the location and boundaries of the land or natural resources so acquired. Filing by mail shall be complete upon mailing.

B. No land or natural resources may be acquired by the secretary for the Houlton Band of Maliseet Indians until the secretary files with the Maine Secretary of State a certified copy of the instrument creating the trust described in section 6208-A, together with a letter stating that he holds not less than \$100,000 in a trust account for the payment of Houlton Band of Maliseet Indians' obligations, and a copy of the claim filing procedures he has adopted.

C. No land or natural resources located within any city, town, village or plantation may be acquired by the secretary for the Houlton Band of Maliseet Indians without the approval of the legislative body of the city, town, village or plantation.

2. Takings for public uses. Houlton Band Trust Land may be taken for public uses in accordance with the laws of the State of Maine to the same extent as privately-owned land. The proceeds from any such taking shall be deposited in the Land Acquisition Fund. The United States shall be a necessary party to any such condemnation proceeding. After exhausting all state administrative remedies, the United States shall have an absolute right to remove any action commenced in the courts of this State to a United States court of competent jurisdiction.

3. Restraints on alienation. Any transfer of Houlton Band Trust Land shall be void ab initio and without any validity in law or equity, except:

A. Takings for public uses pursuant to the laws of this State;

B. Takings for public uses pursuant to the laws of the United States;

C. Transfers of individual use assignments from one member of the Houlton Band of Maliseet Indians to another band member;

D. Transfers authorized by United States Public Law 96-420, Section 5(g)(3), United States Code, Title 25,

Section 1724(g)(3); and

E. Transfers made pursuant to a special act of Congress.

If the fee to the Houlton Band Trust Fund Land is lawfully transferred to any person or entity, the land so transferred shall cease to have the status of Houlton Band Trust Land.

Sec. 3. 30 MRSA §6206-A is enacted to read:

§6206-A. Powers of the Houlton Band of Maliseet Indians

The Houlton Band of Maliseet Indians shall not exercise nor enjoy the powers, privileges and immunities of a municipality nor exercise civil or criminal jurisdiction within their lands prior to the enactment of additional legislation specifically authorizing the exercise of those governmental powers.

Sec. 4. 30 MRSA §6208, sub-§2, as enacted by PL 1979, c. 732, §§1 and 31, is amended by adding after the first sentence a new sentence to read:

The Houlton Band of Maliseet Indians shall make payments in lieu of taxes on Houlton Band Trust Land in an amount equal to that which would otherwise be imposed by a municipality, county, district, the State or other taxing authority on that land or natural resource.

Sec. 5. 30 MRSA §6208, sub-§2, as enacted by PL 1978, c. 732, §§1 and 31, is amended by adding at the end a new sentence to read:

The Houlton Band of Maliseet Indians shall not be deemed to own or use any property for governmental purposes.

Sec. 6. 30 MRSA §6208, sub-§3, as enacted by PL 1979, c. 732, §§1 and 31, is amended by adding at the end a new sentence to read:

The Houlton Band of Maliseet Indians shall not be deemed to be a governmental entity or to have the powers of a municipality.

Sec. 7. 30 MRSA §6208-A is enacted to read:

§6208-A. Houlton Band Tax Fund

1. Fund. The satisfaction of obligations, described in section 6208, owed to a governmental entity by the Houlton Band of Maliseet Indians shall be assured by a trust fund to be known as the Houlton Band Tax Fund. The secretary shall administer the fund in accordance with reasonable and prudent trust management standards. The initial principal of the fund shall be not less than \$100,000. The principal shall be formed with moneys transferred from the Land Acquisition Fund established for the Houlton Band of Maliseet Indians pursuant to United States Public Law 96-420, Section 5, United States Code, Title 25, Section 1724. Any interest earned by the Houlton Band Tax Fund shall be added to the principal as it accrues and that interest shall be exempt from taxation. The secretary shall maintain a permanent reserve of \$25,000 at all times and that reserve shall not be made available for the payment of claims. The interest earned by the reserved funds shall also be added to the principal available for the payment of obligations.

2. Claims. The secretary shall pay from the fund all valid claims for taxes, payments in lieu of property taxes and fees, together with any interest and penalties thereon, for which the Houlton Band of Maliseet Indians is liable pursuant to section 6208, provided that such obligation is final and not subject to further direct administrative or judicial review under the laws of the State of Maine. No payment of a valid claim may be satisfied with moneys from the fund unless the secretary finds, as a result of his own inquiry, that no other source of funds controlled by the secretary is available to satisfy the obligation. The secretary shall adopt written procedures, consistent with this section, governing the filing and payment of claims after consultation with the Maine Commissioner of Finance and Administration and the Houlton Band of Maliseet Indians.

3. Distributions. If the unencumbered principal available for the payment of claims exceeds the sum of \$100,000, the secretary shall, except for good cause shown, provide for the transfer of such excess principal to the Houlton Band of Maliseet Indians. The secretary shall give 30 days' written notice to the Commissioner of Finance and Administration of a proposed transfer of excess principal to the Houlton Band of Maliseet Indians. Any distribution of excess principal to the Houlton Band of Maliseet Indians shall be exempt from taxation.

4. Other remedies. The existence of the Houlton Band Tax Fund as a source for the payment of Houlton Band of

Maliseet Indians' obligations shall not abrogate any other remedy available to a governmental entity for the collection of taxes, payments in lieu of taxes and fees, together with any interest or penalty thereon.

Sec. 8. Effective date. This Act shall be effective only upon enactment of legislation by the United States:

1. Ratifying and approving this Act without modification;

2. Amending United States Public Law 96-420, Section 6 (e), United States Code, Title 25, Section 1725 (e) to provide the consent of the United States for amendments to the Maine Implementing Act, with respect to the Houlton Band of Maliseet Indians, provided that such amendment of the Maine Implementing Act is made with the agreement of the Houlton Band of Maliseet Indians; and

3. Amending United States Public Law 96-420, Section 5(d), United States Code, Title 25, Section 1724(d), in order to provide the consent of the United States to the transfer of funds from the Land Acquisition Fund established for the Houlton Band of Maliseet Indians to the Houlton Band Tax Fund described in this Act and also to provide for a reversionary interest of the Penobscot Nation and the Passamaquoddy Tribe in the funds so transferred in the event the Houlton Band of Maliseet Indians should terminate its interest in the Houlton Band Trust Fund.

In no event shall this Act become effective until 90 days after the adjournment of the Legislature, as required by the Constitution of Maine, Article IV, Part 3, section 16.

In House of Representatives, 1982

Read twice and passed to be enacted.

..... Speaker

In Senate, 1982

Read twice and passed to be enacted.

..... President

Approved 1982

..... Governor

APPROVED

CHAPTER

APR 14 '86

677.

BY GOVERNOR

PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SIX

H.P. 1418 - L.D. 2007

AN ACT to Amend the Maine Implementing Act
with Respect to the Houlton Band of
Maliseet Indians.

Be it enacted by the People of the State of Maine as
follows:

Sec. 1. 3 MRSA §602, as enacted by PL 1983, c.
497, §1, is amended to read:

§602. Designation of officer

The governor and council of the Penobscot Nation, and the Joint Tribal Council of the Passamaquoddy Tribe and the council of the Houlton Band of Maliseet Indians shall each designate, by name and title, the officer authorized to execute the certificate of approval of legislation required by section 601. The designation shall be in writing and filed with the Secretary of State no later than the first Wednesday in January in the First Regular Session of the Legislature, except that the designation for the Houlton Band of Maliseet Indians must be filed with the Secretary of State no later than 45 days after adjournment of the Second Regular Session of the 112th Legislature. The Secretary of State shall forthwith transmit certified copies of each designation to the Secretary of the Senate and the Clerk of the House of Representatives. The designation shall remain in effect until the governor and council of the Penobscot Nation or, the Joint Tribal Council of the Passamaquoddy Tribe or the council of the Houlton Band of Maliseet Indians make a new designation.

Sec. 2. 30 MRSA §6208, sub-§2, as amended by PL 1981, c. 675, §§4 and 5, is further amended to read:

2. Property taxes. The Passamaquoddy Tribe and the Penobscot Nation shall make payments in lieu of taxes on all real and personal property within their respective Indian territory in an amount equal to that which would otherwise be imposed by a county, a district, the State, or other taxing authority on such real and personal property provided, however, that any real or personal property within Indian territory used by either tribe or nation predominantly for governmental purposes shall be exempt from taxation to the same extent that such real or personal property owned by a municipality is exempt under the laws of the State. The Houlton Band of Maliseet Indians shall make payments in lieu of taxes on Houlton Band Trust Land in an amount equal to that which would otherwise be imposed by a municipality, county, district, the State or other taxing authority on that land or natural resource. Any other real or personal property owned by or held in trust for any Indian, Indian Nation or tribe or band of Indians and not within Indian territory, shall be subject to levy and collection of real and personal property taxes by any and all taxing authorities, including but without limitation municipalities, except that such real and personal property owned by or held for the benefit of and used by the Passamaquoddy Tribe or the Penobscot Nation predominantly for governmental purposes shall be exempt from property taxation to the same extent that such real and personal property owned by a municipality is exempt under the laws of the State. The Houlton Band of Maliseet Indians shall not be deemed to own or use any property for governmental purposes.

Sec. 3. 30 MRSA §6208, sub-§3, as amended by PL 1981, c. 675, §6, is further amended to read:

3. Other taxes. The Passamaquoddy Tribe, the Penobscot Nation, the members thereof, and any other Indian, Indian Nation, or tribe or band of Indians shall be liable for payment of all other taxes and fees to the same extent as any other person or entity in the State. For purposes of this section either tribe or nation, when acting in its business capacity

as distinguished from its governmental capacity, shall be deemed to be a business corporation organized under the laws of the State and shall be taxed as such. The Houlton Band of Maliseet Indians shall not be deemed to be a governmental entity or to have the powers of a municipality.

Sec. 4. Effective date. This Act shall be effective only if:

1. The United States enacts legislation:

A. Ratifying and approving Maine Public Law 1985, chapter 675, without modification; and

B. Amending the United States Public Law 96-420, Section 6 (e), United States Code, Title 25, Section 1725 (e), to provide the consent of the United States for amendments to the Maine Implementing Act, with respect to the Houlton Band of Maliseet Indians, provided that such amendment of the Maine Implementing Act is made with the agreement of the Houlton Band of Maliseet Indians; and

2. Within 60 days of adjournment of the Legislature, the Secretary of State receives written certification by the council of the Houlton Band of Maliseet Indians that the band has agreed to this Act pursuant to the United States Code, Title 25, Section 1725(e)(1), copies of which shall be submitted by the Secretary of State to the Secretary of the Senate and the Clerk of the House of Representatives; provided that in no event shall this Act become effective until 90 days after adjournment of the Legislature.

COMMITTEE AMENDMENT "A" to H.P. 1418, L.D. 2007

STATEMENT OF FACT

1
2 The purpose of this amendment is to include the
3 Houlton Band of Maliseet Indians in the law which re-
4 quires approval by an Indian tribe or nation before
5 any changes to the Maine Indian Claims Settlement Act
6 affecting that tribe or nation are effective. The
7 band must designate the officer who may execute the
8 certificate of approval of legislation for the band.
9 This designation must be in writing and must be filed
10 with the Secretary of State within 45 days after the
11 Legislature adjourns this session.

12 This amendment also adds the required effective
13 date provision. The sections of the Settlement Act
14 that this bill amends were added to the Settlement
15 Act in 1981 by Maine Public Law 1981, chapter 675.
16 They are effective only after the United States, by
17 an act of Congress, ratifies Public Law 1981, chapter
18 675, and amends the Maine Implementing Act to provide
19 the consent of the United States to further amend the
20 Maine Implementing Act with respect to the Houlton
21 Band of Maliseet Indians. The United States has al-
22 ready given consent within the Maine Implementing Act
23 to amend that Act with respect to the Penobscot Na-
24 tion and the Passamaquoddy Tribe. The amendments to
25 the Settlement Act contained in this bill and amend-
26 ment cannot become effective until the United States
27 completes those contingencies. The United States has
28 not yet done so.

29 In addition, none of the 3 sections will become
30 effective unless the Houlton Band of Maliseet Indians
31 agree to the changes made by the sections. The band
32 must certify that agreement within 60 days after the
33 Legislature adjourns.

34 There is a potential loss of revenue in the fu-
35 ture if the Houlton Band of Maliseet Indians ever
36 seeks and obtains status which would make the band
37 exempt from paying taxes. This bill alone does not
38 give the Maliseet Indians that status; other changes

COMMITTEE AMENDMENT "A" to H.P. 1418, L.D. 2007

1 in the law must be made to achieve that result.

2 In summary, all 3 contingencies must be met be-
3 fore this Act becomes effective:

4 1. The United States ratifies Maine Public Law
5 1981, chapter 675;

6 2. The United States amends the Maine Implement-
7 ing Act to extend United States consent to amending
8 the Maine Implementing Act with respect to the
9 Houlton Band of Maliseet Indians; and

10 3. The Houlton Band of Maliseet Indians approve
11 the changes in writing to the Secretary of State
12 within 60 days of enactment of this Act.

13 These sections are added to comply with Joint
14 Rule 36-A.

6755031086

15

Reported by the Committee on Legal Affairs
Reproduced and distributed under the direction of the Clerk of the
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3/27/86 (Filing No. H-507)